APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,092	02/17/2004	Heinz-Hermann Wippersteg	2859	6333

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EXAMINER
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ART UNIT	PAPER NUMBER
2128	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _01 June 2007_.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1,2,5,6,8-14 and 17-23_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-2, 5-6, 8-14 and 17-23_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _02 January 2007_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☒ All   b)☐ Some * c)☐ None of:

   1.☒ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Acknowledgement has been made of Applicant's request for continued examination. Claims 1-2,

5-6, 8-14, 17-23 have been presented for examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition
of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
conditions and requirements of this title.

2.   Claims 1-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-

statutory subject matter, specifically, there is no tangible result. While further-processible output data is

generated, the data, though it may be outputted, is not and is only generated and still remains in the

abstract, or at best within a processor with no real world output.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as
set forth in section 102 of this title, if the differences between the subject matter sought to be
patented and the prior art are such that the subject matter as a whole would have been obvious at
the time the invention was made to a person having ordinary skill in the art to which said subject
matter pertains. Patentability shall not be negatived by the manner in which the invention was
made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966),

that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are

summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or
        nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3.   **Claims 1-2 5-6, 8-14, and 17-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Weigelt et al. (U.S. Patent No. 5,712,782) in view of Bischoff (U.S. Patent No. 6,726,559 B2).**

        As per claim 1, Weigelt is directed to a method of optimization of adjustable parameters of at least one machine, comprising the following steps; providing a data processing system, *wherein the data processing system is a diagnosis system* **(column 6, lines 13-24)**; optimizing adjustable parameters by processing of at least one process algorithm provided in the data processing system **(column 4, lines 38-55)**; *wherein an adjustable parameter to be optimized, a further parameter, and an internal expert knowledge are used as machine internal data* **(column 7, lines 30-39)**; *processing the machine-internal data and machine-external data by the data processing system in consideration of the target data* **(column 7, lines 1-39)**; *and generating further-processible output data* **(column 7, lines 1-39)** but fails to explicitly disclose selecting the process algorithm to be processed from a plurality of process algorithms proposing or automatically selecting a process algorithm by the data processing system depending on data selected from the group consisting of machine-internal data, machine-external data, and target data.

        Bischoff teaches selecting the process algorithm to be processed from a plurality of process algorithms **(column 5, lines 42-47)** and proposing or automatically selecting a process algorithm by the data processing system depending on data selected from the group consisting of machine-internal data, machine-external data, and target data **(column 5, lines 34-61)**. It would have been obvious to an

ordinary person skilled in the art at the time of the invention to combine the method of optimization of adjustable parameters of at least one machine of Weigelt with the selection of process algorithms method steps of Bischoff in order to accommodate various types of continually changing operating conditions **(Bischoff, column 7, lines 25-30).**

As per claim 2, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising determining the optimization of the adjustable parameter by target data selected from the group consisting of editable target data, and storable target data **(Weigelt, column 7, lines 1-39).**

As per claim 5, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of editing and storing the machine-internal data, the machine-external data and the output data by the data processing system **(Weigelt, column 7, lines 1-39).**

As per claim 6, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of operating the data processing system in a time controlled manner **(Weigelt, column 5, lines 24-33).**

As per claim 8, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of using a traveling speed, a rotary speed of at least one threshing drum and/or the rotary speed of a blower of at least one cleaning device as the adjustable parameters to be optimized **(Weigelt, column 5, lines 24-33).**

As per claim 9, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of using a crop-specific and/or machine-specific parameter as the further parameter; and performing the determination of the further parameter by sensors which are in operative communication with the machine or by inputting **(Weigelt, column 5, lines 48-59).**

As per claim 10, the combination of Weigelt and Bischoff already discloses a method as defined in claim 9; and further comprising the step of using a parameter selected from the group consisting of a

grain loss, a grain throughput, a crop moisture, a crop total throughput and a broken corn portion as the further parameter (**Weigelt, column 7, lines 40-55**).

As per claim 11, the combination of Weigelt and Bischoff already discloses a method as defined in claim 9; and further comprising the step of using adjustment regions for parameters of working units of the machine *as the further parameter* (**Weigelt, column 6, lines 13-24**).

As per claim 12, the combination of Weigelt and Bischoff already discloses a method as defined in claim 5; and further comprising the step of generating the machine-external data by external systems and using plant-specific data, geographic data, weather data and/or external expert knowledge as the machine-external data (**Weigelt, column 2, lines 40-55**).

As per claim 13, the combination of Weigelt and Bischoff already discloses a method as defined in claim 12; and further comprising the step of using crop and/or data and experience knowledge as the external expert knowledge and as internal expert knowledge (**Weigelt, column 7, lines 30-39**).

As per claim 14, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of processing a diagnosis selected from the group consisting of process diagnosis, case diagnosis, and model-oriented diagnosis, with the at least one process algorithm of the data processing device (**Weigelt, column 8, line 60 – column 9, line 7**).

As per claim 17, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of defining situation patterns for the process algorithms by at least a part of data selected from the group consisting of machine-internal data, machine-external data, target data and combinations thereof (**Bischoff, column 6, lines 49-65**); and selecting a situation pattern which comes close or is identical to an instantaneous situation pattern and a process algorithm linked to the situation pattern, depending on the at least one part of the machine-interior data and machine-exterior data with consideration of the target data which defines at least a part of an instantaneous situation pattern (**Bischoff, column 6, lines 45-49**).

As per claim **18**, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of generating changed process algorithms generation by the data processing system depending on machine-interior data and machine-exterior data and with consideration of changeable target data (**Bischoff, column 5, lines 34-61**).

As per claim **19**, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of generating changed situation patterns by the data processing system in dependence on machine-interior data and machine-exterior data and with consideration of changeable target data (**Bischoff, column 6, lines 45-65**).

As per claim **20**, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of storing process algorithms, situation patterns or both in data sets, wherein the data sets include at least a part of machine-internal data, machine-external data and target data (**Bischoff, column 6, lines 49-65**).

As per claim **21**, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of incorporating in data processing system situation patterns and associated process algorithms and/or optimized adjustable parameters to be available for further machines (**Bischoff, column 4, line 60 – column 5, line 12**).

As per claim **22**, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1, wherein the machine is an agricultural harvester; and further comprising determining at least one process algorithm depending on harvesting conditions of the agricultural harvester (**column 5, lines 40-59**).

As per claim **23**, the combination of Weigelt and Bischoff already discloses a method as defined in claim 1; and further comprising the step of adapting the processing algorithm by questioning (**Weigelt, column 8, lines 15-19**).

Response to Arguments

4.   Applicant's arguments filed 01/02/07 have been fully considered but they are not persuasive.

5.   The 101 rejection of claims 1-2, 5-6, 8-14, and 17-23 are maintained. While further-processible output data is generated, the data, though it may be outputted, is not and is only generated and still remains in the abstract, or at best within a processor with no real world output. Furthermore, the MPEP 2106 states:

> **A claimed invention is directed to a practical application of a 35 U.S.C. 101 judicial exception when it:**
>
> **(A)   "transforms" an article or physical object to a different state or thing; or**
>
> **(B)   otherwise produces a useful, concrete and tangible result, based on the factors discussed below.**

Thus, a *physical* transformation renders a judicial exception statutory, transformation of data alone (generating further-processible output data) does not.

6.   The 112 rejections of claims 2, 7, 11-12, 14, and 23 are withdrawn due to the amendments.

7.   Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new grounds of rejection. In regards to Weigelt, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Additionally, in regards to claim 17, the Examiner is at a loss to understand Applicant's argument that Bischoff fails to disclose "situation patterns" when further arguing:

> fails to disclose "situation patterns". In addition, Bischoff teaches a system which recognized nearly identical situation patterns and depending on the identified situation pattern, the system elects a process algorithm linked with the identified situation pattern.

Conclusion

8.   The prior art made of record is not relied upon because it is cumulative to the applied rejection.

These references include:

1. U.S. Patent No. 6,622,070 B1 issued to Wacker et al. on 09/16/03.

2. U.S. Patent No. 6,937,939 B1 issued to Shibusawa et al. on 08/30/05.

3. U.S. Patent No. 4,337,611 issued to Mailander et al. on 07/06/82.

9.   All Claims are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Suzanne Lo whose telephone number is (571)272-5876. The examiner can normally be

reached on M-F, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Kamini Shah can be reached on (571)272-2297. The fax phone number for the organization where this

application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained

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Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR

CANADA) or 571-272-1000.

Suzanne Lo
Patent Examiner
Art Unit 2128

KAMINI SHAH
SUPERVISORY PATENT EXAMINEr

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08/09/07